

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NATURAL RESOURCES DEFENSE
COUNCIL, CENTER FOR BIOLOGICAL
DIVERSITY, CONSUMER FEDERATION OF
AMERICA, MASSACHUSETTS UNION OF
PUBLIC HOUSING TENANTS, PUBLIC
CITIZEN, and SIERRA CLUB,

Plaintiffs,

and

ASSOCIATION OF HOME APPLIANCE
MANUFACTURERS, and AIR-
CONDITIONING, HEATING &
REFRIGERATION INSTITUTE,

Plaintiff-Intervenors,

v.

JENNIFER M. GRANHOLM, as SECRETARY
OF THE UNITED STATES DEPARTMENT OF
ENERGY, and UNITED STATES
DEPARTMENT OF ENERGY,

Defendants

CIVIL ACTION No.: 20-cv-9127

**STIPULATION AND
[PROPOSED] ORDER
PERMITTING ASSOCIATION OF
HOME APPLIANCE
MANUFACTURERS and AIR-
CONDITIONING, HEATING AND
REFRIGERATION INSTITUTE
TO INTERVENE**

WHEREAS, Association of Home Appliance Manufacturers (“AHAM”) and Air-Conditioning, Heating & Refrigeration Institute (“AHRI”) (collectively “Plaintiff-Intervenors”) have filed a motion to intervene as Plaintiffs in this action; and

WHEREAS, Plaintiffs and Defendants consent to intervention by Plaintiff-Intervenors for limited purposes, as set forth herein;

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned attorneys for Plaintiffs, for Defendants, and for Plaintiff-Intervenors, as follows:

1. Plaintiffs and Defendants consent to intervention in this action by Plaintiff-Intervenors, subject to the terms stated below.

2. If the Court grants the request of Plaintiff-Intervenors to intervene based on the terms of this Stipulation and Proposed Order, the following limitations shall apply:

- (a) Plaintiff-Intervenors shall file their Complaint in Intervention within seven (7) days after entry by the Court of an Order granting their request to intervene;
- (b) Plaintiffs and Plaintiff-Intervenors shall not assert any cross-claim(s) against the other and shall not seek an award of attorneys' fees from the other;
- (c) Plaintiff-Intervenors shall not seek an award of attorneys' fees from any Defendant, or any substitute Defendant;
- (d) Plaintiff-Intervenors shall not take a position contrary to Plaintiffs' allegations in the Complaint filed on October 30, 2020, that the Department of Energy has missed statutory deadlines under the Energy Policy and Conservation Act;
- (e) Plaintiff-Intervenors shall not oppose a motion to hold this action in abeyance for purposes of negotiation of possible settlement of this action, provided (a) the motion does not impose obligations on Plaintiff-Intervenors; and (b) the motion does not propose any timeline for any rulemaking; and
- (f) Plaintiff-Intervenors shall not take a position on the timing of when Plaintiffs may file a motion for summary judgment (but Plaintiff-Intervenors may seek reasonable accommodations regarding their briefing of any motions).

3. Plaintiff-Intervenors shall have the right to participate fully in the briefing of, or any hearing with respect to, the potential remedy that the Court should impose.

4. Nothing in this stipulation creates a right for any Plaintiff or Plaintiff-Intervenor to participate in settlement negotiations between Defendants and any other party. If any Plaintiff and Defendant reach agreement on terms of any settlement and/or consent decree (collectively, a “Settlement”) that involves a court order, Plaintiffs shall provide to Plaintiff-Intervenors a copy of such proposed Settlement at least ten (10) days before the proposed settlement is filed with the Court or otherwise presented to the Court for approval. After that ten-day period, Plaintiffs and Defendants may seek the Court’s approval of such Settlement. Unless Plaintiff-Intervenors have consented in writing to such Settlement, Plaintiff-Intervenors may file a brief regarding the Settlement within ten (10) days after it has been filed with the Court and may participate in any hearing regarding approval or entry of the Settlement. Plaintiff-Intervenors shall treat any proposed Settlement received under this paragraph as confidential until it has been filed with the Court; provided, however, that Plaintiff-Intervenors shall be permitted to disclose the terms of the Settlement to, and discuss those terms with, Plaintiff-Intervenors’ members that may be affected by the Settlement.

5. If, after any Settlement has been entered as an order of the Court, there is any negotiated amended Settlement, Paragraph 4 above shall apply to any such amended Settlement.

6. A Court-approved Settlement or combination of Settlements that resolves all claims of Plaintiffs in this action shall also be deemed to resolve any claims of Plaintiff-Intervenors asserted in their Complaint in Intervention.

7. By entering into this Stipulation, no party waives any defense they may have, including any argument as to any other party’s constitutional, statutory, or prudential standing.

Dated: New York, New York
March 16, 2021

SO STIPULATED:

NATURAL RESOURCES DEFENSE
COUNCIL

/s/ Jared E. Knicley (with permission)
Jared E. Knicley, *pro hac vice* pending
Joseph Vukovich, admitted *pro hac vice*
1152 15th Street, NW, Suite 300
Washington, DC 20005
Tel: (202) 513-6242
E-mail: jknicley@nrdc.org,
jvukovich@nrdc.org
*Attorneys for Plaintiffs Natural Resources
Defense Council and Public Citizen*

MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY AND POPEO, P.C.

/s/ Kevin N. Ainsworth
Kevin N. Ainsworth
Evelyn A. French
(admission *pro hac vice* forthcoming)
Chrysler Center – 666 Third Avenue
New York, New York 10017
Telephone: (212) 692-6745
Email: kainsworth@mintz.com
*Attorneys for Plaintiff-Intervenors
Association of Home Appliance Manufacturers and
Air-Conditioning, Heating & Refrigeration Institute*

EARTHJUSTICE

/s/ Timothy Ballo (with permission)
Timothy Ballo, admitted *pro hac vice*
1001 G Street NW, Suite 1000
Washington, DC 20001
Tel: (202) 745-5209
E-mail: tballo@earthjustice.org
*Attorney for Plaintiffs Center for Biological
Diversity, Consumer Federation of America,
Massachusetts Union of Public Housing
Tenants, and Sierra Club*

AUDREY STRAUSS
United States Attorney for the
Southern District of New York

By: /s/ Talia Kraemer (with permission)
TALIA KRAEMER
Assistant United States Attorney
Tel.: (212) 637-2822
Fax: (212) 637-2702
E-mail: talia.kraemer@usdoj.gov
*Attorney for Jennifer Granholm and the
Department of Energy*

SO ORDERED:

_____, 2021

ALISON J. NATHAN
United States District Judge